



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

Case: S ECI 2023 00969
Filed on: 20/12/2024 10:30 AM

No. S ECI 2023 00969

B E T W E E N

JARAD MAXWELL ROOKE

Plaintiff

- and -

AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)

Defendant

REPLY TO THE FIRST DEFENDANT'S DEFENCE

Date of Document:	20 December 2024	Solicitors Code:	113394
Filed on behalf of:	The Plaintiff	Telephone:	(03) 9133 0288
Prepared by:	Margalit Injury Lawyers	Ref:	21721
	Suite 4, 107-111 High Street	Email:	info@margalitlawyers.com.au
	Prahran VIC 313		

In answer to the First Defendant's Defence to the Amended Statement of Claim dated 17 December 2024 (**'the Defence'**), the Plaintiff says:

1. As to paragraphs 65 to 67 of the Defence:
 - a. the relevant risk of harm was the concussion management risk of harm as that term is defined in paragraph 28 of the Amended Statement of Claim, not the risk of suffering a concussion and/or head knock;
 - b. the concussion management risk of harm was not obvious to a reasonable person in the position of the Plaintiff within the meaning of sections 53 and 54(1) of the *Wrongs Act 1958* (Vic) (**'Wrongs Act'**);
 - c. the Plaintiff did not freely or voluntarily, or with awareness of the risk, or with full appreciation of the risk, agree to incur the concussion management risk of harm;
 - d. the First Defendant was providing a professional service within the meaning of section 54(2)(a) of the *Wrongs Act*, such that section 54(1) of

the *Wrongs Act* does not apply to the Plaintiff's or group members' claims;
and

- e. the proceedings are a claim for damages in respect of risks associated with work done by one person, the Plaintiff and group members, for another, the AFL and/or the AFL Clubs, within the meaning of section 54(2)(b) of the *Wrongs Act*, such that section 54(1) of the *Wrongs Act* does not apply to the Plaintiff's or group members' claims.
- 2. As to paragraph 68 of the Defence:
 - a. the concussion management risk of harm as that term is defined in paragraph 28 of the Amended Statement of Claim was not an inherent risk within the meaning of section 55 of the *Wrongs Act*;
 - b. the First Defendant had available to it the reasonable precautions, as that term is defined in paragraph 30 of the Amended Statement of Claim;
 - c. a reasonable person in the position of the AFL would have taken the reasonable precautions as set out in paragraphs 28 to 37 of the Amended Statement of Claim; and
 - d. in the alternative, the First Defendant failed to warn of the risk within the meaning of section 55(3) of the *Wrongs Act* such that section 55 does not exclude the First Defendant's liability.
 - 3. As to paragraph 72 of the Defence, it is just and reasonable to extend the period of limitation applicable to the Plaintiff's cause of action within the meaning of section 27K of the *Limitation of Actions Act 1958* (Vic), having regard to those factors set out in section 27L thereof.
 - 4. As to paragraphs 73 to 74 of the Defence, the group members' limitation periods are suspended in accordance with section 33ZE of the *Supreme Court Act 1986* (Vic).
 - 5. Save as to admissions contained within the Defence, the Plaintiff otherwise joins issue with each of the denials and non-admissions contained therein.

PETER G. HAMILTON

Margalit Injury Lawyers

.....
Margalit Injury Lawyers
Solicitor for the Plaintiff